IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5931 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NALANDA KELAVNI MANDAL

Versus

STATE OF GUJARAT

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Appearance:

MR RN SHAH for Petitioner

MR RM DESAI for Respondent No. 1

MR AD OZA for Respondent No. 2

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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 30/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside the Government Resolution at Annexure : B to the petition, dated 20th June, 1987 and by directing the respondent authorities to continue the policy of providing grant to the Secondary School of the petitioner after a period of two years of its registration.

2. The case of the petitioner is that it is a trust registered under the Bombay Public Trusts Act, 1950 at Modasa which is a backward area of the State of Gujarat.

It is running a school. As in the nearby area, there was no secondary school, the petitioner made an application to allow it to open a Secondary School. Initially, permission was granted to start Standard VIII under Sec.31 of the Gujarat Secondary Education Act, 1972 on fulfillment of certain terms and conditions which was done by the petitioner. It was the case of the petitioner that as per the policy of the Government, as reflected in the resolution dt. November 10, 1978, a secondary school will not be eligible for benefit of grant for a period of two years but thereafter, grant will be paid to such school. It was thus a declared policy of the State Government, pursuant to which an application was made by the petitioner to open Standard VIII which was granted and the petitioner opened Standard VIII. The case of the petitioner is that after completion of two years, it would be entitled to receive grant from the Government. Suddenly, however, on June 20, 1987, the State Government issued another resolution by which earlier resolution dt. November 10, 1978 was modified and it was decided to give grant to such schools after five years. Being aggrieved by the above resolution, the petitioner has approached this court. Rule was issued and matter is called out today for final hearing.

2. Mr. R.N.Shah, learned counsel for the petitioner contended that in accordance with the provisions of the Secondary Education Act, 1972, permission to open Standard VIII was granted. The petitioner had complied with all the terms and conditions and it is not the case of the authorities that the petitioner has not fulfilled conditions on which permission was granted. As per policy of the Government, the petitioner School was not eligible to be considered for grant for a period of two years. But when the petitioner successfully completed two years, it was not open to the Government to change the policy and extend the said period. Even if it is assumed that policy can be changed, the petitioner who had opened the school on the basis of the earlier resolution cannot be deprived of the benefit of grant after two years. The action of the Government denying payment of grant for five years on the basis of the subsequent resolution would be against the doctrine of promissory estoppel and such an action being arbitrary and unreasonable, could not be taken by the authorities and appropriation direction is called for by ordering the respondent authorities to pay grant to the petitioner.

3. Mr. Bukhari, learned Assistant Government Pleader, on the other hand, supported the resolution

passed by the State Government (Annexure: B to the petition). He submitted that when the permission was granted, several terms and conditions were mentioned in the order and one of the conditions provided that the petitioner would abide by any policy regarding grant which will be decided by the Government from time to time. Accordingly, when the Government changed its policy and decided to give grant after five years, instead of two years, the petitioner cannot make any grievance and the petition deserves to be dismissed.

4. In the facts and circumstances of the case, in my opinion, the petition deserves to be allowed partly. So far as the averments made in the petition are concerned, they are not controverted by filing a counter affidavit. It is a specific case of the petitioner that the permission was granted on the basis of the resolution dated 10th November, 1978 which provided that a secondary school will not be eligible to get grant for a period of two years. Acting on the said resolution of 1978, the petitioner opened its school. It is true that terms and conditions were laid down in the order and one of them provided that the petitioner would be bound by the policy of the Government regarding payment of grant that may be issued from time to time, but prima facie, the petitioner is right that precisely, in these circumstances, the doctrine of promissory estoppel would come into play. When the petitioner was granted permission and opened the school, he was informed that his school will not be considered eligible for grant for a period of two years. Relying on the said resolution, the petitioner opened the Standard VIII. Prima facie, therefore, he is right in contending that after two years, the petitioner would be considered eligible and he would be entitled to receive grant. He was, however, refused the grant on the basis of subsequent resolution. since no affidavit in reply is filed by the other side, it is not clear why the benefit is denied.

5. The prayer of Mr. Shah is to direct the respondent authorities to direct the authority to pay the amount of grant. Such a prayer, in my opinion, cannot be granted but a limited prayer can be granted by directing the respondent authority to consider the case of the petitioner as to why he is deprived of the benefit of grant which according to the petitioner, he would be entitled under the resolution dated November 10, 1978. Since I am not issuing mandamus directing the authorities to release the grant, I grant liberty to the petitioner to make a representation to the Government. If such a representation is made by the petitioner within a period

of one month from today, the authorities will decide the same as expeditiously as possible, preferably within three months from the receipt of the said representation.

5. For the foregoing reasons, the petition deserves to be partly allowed and is accordingly allowed. If the petitioner will make a representation to the respondent authority within a period of one month from today, the authority will decide the same as expeditiously as possible, preferably within three months from the receipt of the representation in the light of the observations made by me hereinabove. Rule is made absolute to the above extent. In the facts and circumstances of the case, there shall be no order as to costs.

Date:30/3/2000. (C.K.THAKKER,J.)
ccshah